IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.432 OF 2005
WITH
WRIT PETITION NO.457 OF 2005

W.P.NO.432 OF 2005

M/s.Promuk Hoffman International Ltd.,)
a Public Limited Company incorporated)
under the provisions of the Companies Act,)
1956 (Act 1 of 1956), having its registered)
office at 284, Swapnalok Complex,)
92, S.D.Road, Secunderabad 500 003)
represented herein by its Authorised)
Signatory Shri C.S. Nagraj, aged 47 years,)
residing at Hyderabad, Andhra Pradesh.).. Petitioner

Vs.

1. State of Goa, through its)
Chief Secretary, having Office)
at Secretariat, Porvorim,)
Bardez-Goa.)

2. The Director of Transport,)
Directorate of Transport,)
Government of Goa, Junta House,)
Panaji-Goa.)

3. M/s.Shimnit Utsch India Pvt.Ltd.,)
a Private Company incorporated)
under the provisions of the Companies)
Act, 1956, having its Registered)
Office at 8th Floor, Regent Chambers,)
Nariman Point, Mumbai – 400 021.).. Respondents

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S/Shri S.R.Kakodkar, Senior Advocate with S.Ravi and M.S.Sonak, Advocates for the petitioner.

Shri S.S.Kantak, Advocate General with Ms R.Chodankar, Addilitional Government Advocate for respondent Nos.1 and 2.

Shri Sunil Manohar with Ms U.Dahanukar, Shri Saket Singh, Ms Neha Bhide, Shri D. Lawande and Shri Amey Kakodkar, Advocates i/b Kaitan & Jayakar for respondent No.3.

W.P.NO.457 OF 2005.

M/s.Hind Industries Ltd.,)
a public limited company incorporated)
under the Companies Act, having its)
Registered Office at A-1, Phase-I,)
Okhla Industrial Area, New Delhi 110 020,)
represented herein by its Managing Director,)
Shri Sirajuddin Qureshi, residing at 69,)
Siddharth Enclave, New Delhi 110 014.).. Petitioner

Vs.

1. State of Goa, through its)
Chief Secretary, having Office)
at Secretariat, Porvorim,)
Bardez-Goa.)

2. The Director of Transport,)
Directorate of Transport,)
Junta House, 18th June Road,)
Panaji-Goa.)

3. M/s.Shimnit Utsch India Ltd.,)
a Company registered under the)
Companies Act, 1956, and having its)
Registered Address at 8th Floor,)
Regent Chambers, Nariman Point,)
Mumbai – 400 021.)

4. M/s.Real Mazon India Ltd.,)
a Company incorporated under the)
Indian Companies Act, having its)
office at 34 Rama Road,)
New Delhi 110 015.)

5. M/s.Tonnjes Eastman Securities)
Pvt.Ltd., a company incorporated)
under the India Companies Act, 1956,)
having its Registered Address at)
C-117, Sarita Vihar,)
New Delhi – 110 076.).. Respondents

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S/Shri S.G.Dessai, Senior Advocate with V.R.Tamba, Advocate for the petitioner.

Shri S.S.Kantak, Advocate General with Ms R.Chodankar, Addilitional Government Advocate for respondent Nos.1 and 2.

Shri Sunil Manohar with Ms U.Dahanukar, Shri Saket Singh, Ms Neha Bhide, Shri D. Lawande and Shri Amey Kakodkar, Advocates i/b Kaitan & Jayakar for respondent No.3.

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CORAM : R.M.S.KHANDEPARKAR &
N.A.BRITTO, JJ

DATED : 14TH FEBRUARY, 2006.

JUDGMENT : (PER R.M.S.KHANDEPARKAR, J)

1. Since the common questions of law and facts arise in both these petitions, they were heard together and are being disposed of by this common judgment. We have heard at length S/Shri S.K. Kakodkar and S.G. Dessai, Senior Advocates for the respective

petitioners and Shri S.S. Kantak, Advocate General for the respondent Nos.1 and 2 and S.V. Manohar, Advocate for the respondent No.3.

2. In both these petitions, the petitioners challenge the rejection of their bids at the pre-qualification stage. The bids were submitted by the petitioners in answer to the notices issued by the 1st respondent inviting tenders from eligible manufacturers for supply of high security registration plates for all types of vehicles in the State of Goa. The petitioners' tenders have been rejected on the ground that the same were not substantially responsive in terms of the tender documents.

3. Writ Petition No.432 of 2005 is by Promuk Hoffman International Limited, a public limited company incorporated in pursuance of and in culmination of a joint venture agreement drawn between Promuk Associates and M/s.EHA Hoffman KG, a German Company, for the purpose of manufacture and supply of high security car licence plates among some other products. M/s. EHA Hoffman KG, a German Company is stated to be pioneer in manufacture of high security vehicle registration plates, electronic vehicle systems etc. and is operating in more than 30 countries worldwide in the said field. The petitioners in this petition is hereinafter called as “the

Promuk Hoffman".

4. Writ Petition No.457 of 2005 is by M/s.Hind Industries, a public limited company stated to have been involved in the manufacture of high security registration plates. The said public limited company has entered into a joint venture agreement dated 3rd February, 2005 with M/s.Muschard Technikvertrieb – Germany and Wilhelm Grewe OHG- Germany. Both the German Companies are stated to have expertise in manufacture of high security vehicle registration plates and is in joint venture business of manufacturing, supplying and exporting various products and is operating worldwide. The petitioner in this petition is hereinafter called as "Hind Industries".

5. Sometimes, in the third week of September, 2005, the respondent No.1 issued notice inviting tenders from eligible manufacturers to produce high security registration plates for all types of vehicles in the State of Goa and the bidders were required to submit their bids in three parts i.e. in three envelopes. The First envelope to contain pre-qualification details and the documents, the second to contain technical bids and the third to contain financial bid. In all, five bidders including the petitioners submitted their

respective tenders in three envelopes within the time specified in the said notice.

6. On 18th October, 2005, the pre-qualification bids submitted by all the five tenderers were opened in presence of the representatives of the bidders. After opening the bids, they were circulated amongst the representatives of all the bidders present on the occasion and their comments thereon were invited. After receipt of the comments from the petitioners in relations to the bids submitted by others, the Committee which was constituted on 12th August, 2005 to oversee the tender process and analyse the bids, in its meeting held on 21st and 25th October, 2005, after taking note of various points in respect of the tenders submitted by each of the five bidders and after evaluating them, decided to disqualify the petitioners herein. Pursuant to the said decision, the respondent No.2 under a letter dated 3rd November, 2005 informed the petitioners that the Committee on high security registration plates, after having evaluated the pre-qualification bids of the petitioners, had decided to reject their bids as not being substantially responsive in terms of tender document.

7. While it is the case of the Promuk Hoffman that it had

orally demanded to know the reasons for its disqualification, the Hind Industries did address a letter dated 10th November, 2005 requesting the respondents to divulge the precise reasons for which its bid was rejected. The respondent No.2 under its letter dated 14th November, 2005 addressed to the Hind Industries informed that its bid was rejected on three grounds as were described in the said letter.

8. Being dissatisfied with the decision of rejection of their bids at the pre-qualification stage, both the petitioners have filed the present petitions. Various grounds were canvassed across the bar for assailing the said decision, and the reported decisions are also sought to be relied upon in support of the contentions. We shall deal with those contentions and refer to those decisions in the course of this judgment.

9. The law on the point of scope of judicial review in tender matters is well settled. The Apex Court in the matter of Air India Ltd. v. Cochin International Airport Ltd. & Ors., reported in (2000)2 SCC 617, after taking note of the fact that the law relating to the award of a contract by the State, its corporations and bodies acting as instrumentalities and agencies of the Government had been settled by

the decision of the Apex Court in Ramana Dayaram Shetty v. International Airport Authority of India, [(1979) 3 SCC 489], Fertilizer Corporation Kamgar Union (Regd.) v. Union of India, [(1981)1 SCC 568], CCE v. Dunlop India Ltd., [(1985) 1 SCC 260], Tata Cellular v. Union of India, [(1994) 6 SCC 651], Ramniklal N.Bhutta v. State of Maharashtra, [(1997) 1 SCC 134], and Raunaq International Ltd. v. I.V.R.Construction Ltd., [(1999) 1 SCC 492], held that :-

> "..... the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedures laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the court can examine the decision-making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness. The State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision-making process the court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point.

> The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should intervene.“
>
> (Emphasis supplied)

10. While dealing with the subject of judicial review of a decision of public authority, the Apex Court taking note of the Wednesbury's principles of reasonableness, as was propounded in Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation, reported in 1947(2) All England Law Reports 680, it was held as under: -

> “(1) It is open to the court to review the decision-maker's evaluation of the facts. The court will intervene where the facts taken as a whole could not logically warrant the conclusion of the decision-maker. If the weight of facts pointing to one course of action is overwhelming, then a decision the other way, cannot be upheld.

(2) A decision would be regarded as unreasonable if it is partial and unequal in its operation as between different classes."

Precisely, therefore, the challenge to the decision of rejecting bids of the petitioners at the pre-qualification stage has to be considered without ignoring the above mentioned limitations. In other words, what is essentially to be considered in both the petitions is whether the rejection of bids by the respondents on the ground that their bids are not substantially responsive in terms of tender document can be regarded as arbitrary and unreasonable. Undoubtedly, the point will have to be answered taking into consideration the various contentions sought to be raised in the matter.

11. Considering the subject matter of tender in the case in hand, it is necessary, at the outset, to take note of the decision of the Apex Court in the matter of Association of Registration Plates v. Union of India & Ors., reported in (2005) 1 SCC 679, which was relating to a dispute concerning the terms and conditions of the notices inviting tenders for supply of high security registration plates for motor vehicles issued by various State Governments on the basis

of the guidelines circulated by Central Government for implementing the provisions of the Motor Vehicles Act, 1988 and Central Motor Vehicles Rules, 1989. The main grievance of the petitioner therein was that all the notices inviting tenders which were issued by various State Governments contained conditions were tailored to favour companies having foreign collaboration and that the same was to encourage creation of monopoly in favour of a few parties having connection with foreign concerns. While rejecting various contentions sought to be raised in that regard, the Apex Court had observed that the object of the new scheme is to curb the increasing menace of vehicle thefts and their usage in commission of crimes like murder, dacoity, kidnapping, etc., and the Central Government on the recommendations of its Technical Committee had devised a system of high security registration plates which will ensure public safety and security. Inter alia, it was also observed that the insistence of the State to search for an experienced manufacturer with sound financial and technical capacity cannot be misunderstood. While taking note of the fact that it was not controverted that the technical “know-how” for the manufacture of high security registration plates presently is available outside India and that technically and financially, competent indigenous manufacturers are mostly those who are in collaborations with foreign companies engaged in such manufacturing activities, it

was observed that “keeping in view the nature of the contract and job involved, particularly its magnitude and the huge investment for infrastructure required, attempt to select such manufacturer – maybe having collaboration with foreign companies and experience in foreign countries – cannot be held to be a deliberate attempt on the part of the State authorities to eliminate indigenous manufacturers.” The contention regarding creation of monopoly was also rejected holding that selecting one manufacturer through a process of open competition is not creation of any monopoly. It was also held that certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work.

12. As regards the Promuk Hoffman's case is concerned, the rejection of its bid has been on two grounds. Firstly that the petitioner did not disclose the required information regarding the partnership with foreign company for the manufacture of high security licence plates with necessary details and clarity as also the documents submitted along with the tender did not contain any legal document regarding financial commitment by UTL to the petitioners, besides that the role of UTL in manufacture and supply of the product was not disclosed. Secondly, annexures and certificates regarding

work experience in security features are not as per the requirement of tender documents.

13. As regards the Hind Industries, their disqualification was firstly because though the Hind Industries claims to have a joint venture between Hind Industries, M/s. Muschard Dechnikvertrieb-Germany and M/s. Wilhelm Grewe OHG- Germany, there is also a fourth party by name Saigal Tubest. There is collaboration between Hind Industries termed as "Joint Venture-I" and Saigal Tubest termed as "Joint Venture-II" to enable the former to set up a unit to manufacture security number plates and therefore the tender enclosures submitted by the petitioner disclosed joint venture of four parties which is contrary to the tender conditions. Secondly, the bank solvency certificate which was enclosed by Hind Industries was addressed to Transport Commissioner of Rajasthan and not to the respondent No.2. Thirdly, in respect of security features experience, they were all self-attested and supplied by private agencies and did not satisfy the mandatory requirement of tender conditions.

14. The decision to reject the bids of the petitioners was followed by a letter dated 3rd November, 2005 whereby the petitioners were informed about the same as under :-

"No.D.Tpt/EST/1493/2002(Part)/2005/2049

Government of Goa,
Director of Transport,
Panaji – Goa.

Dated : 3rd November, 2005.

To,

Promuk Haffman International Ltd.,
204, Swapnalok Complex,
92, S.D.Road,
Secunderabad – 500 003.
Fax No.(040)55325521, 23327983

Sub: Bid for High Security Registration Plates.

Sir/Madam,

This is with reference to your bid for High Security Registration Plates submitted on 18/10/2005. In this regard, I am directed to inform you that the Committee on High Security Plates, after having evaluated your pre-qualification bid had decided to reject the bid as not being substantially responsive in terms of the tender document.

Consequently, your EMD alongwith the Envelope No.2 and 3 are unopened and are returned herewith.

Yours faithfully,
Sd/-
(R.Mihir Vardhan)
Director of Transport

Encl: as above."

15. The first ground of challenge is that communication regarding the rejection of the bid did not disclose reasons for rejection, and therefore, it violates the principles of natural justice and fair play which are necessary concomitants under Article 14 of the Constitution, and therefore, the impugned communication under letter dated 3rd November, 2005 is bad in law.

16. It is not in dispute that consequent to the decision to reject the bid, it was informed to the petitioners under the letters dated 3rd November, 2005. The contents of both the letters were same and the same disclose that the bids were rejected for not being substantially responsive in terms of tender conditions. However, according to the petitioners, it does not amount to communication of the reasons for rejection and in that regard, heavy reliance was placed in the decision of the Apex Court in the matter of M/s. Star Enterprises and Ors. v. City and Industrial Development Corporation of Maharashtra Ltd & Ors., reported in 1990(3) SCC 280 on behalf of the petitioners.

17. It is not in dispute that, as far as Hind Industries is concerned, it had specifically inquired about the details relating to

the reasons for rejection and they were duly supplied with the same. As far as Promuk Hoffman is concerned, apart from mere oral contention that they had orally asked for the reasons in detail, there is nothing on record to substantiate that contention. The fact that the letter dated 3rd November, 2005 did disclose that the rejection of bid was on account of the same being not substantially responsive in terms of the tender document is not in dispute. Obviously, therefore, it cannot be said that the letters dated 3rd November, 2005 did not disclose any reason for rejection of the bid. In fact, it did disclose the reason for rejection of the bid to be that the bids submitted by the petitioners were not substantially responsive in terms of tender document. In case, the petitioners wanted to know the details about the decision of the Committee in that regard, certainly nothing prevented the Promuk Hoffman to inquire about the same, as was asked for by the Hind Industries. It is pertinent to note that such details were immediately furnished to the Hind Industries when they were asked for. The reason disclosed in the letter dated 3rd November, 2005 is strictly in consonance with the decision of the Committee as is revealed from the resolution of the said Committee in relation to its meeting held on 21st and 25th October, 2005. The discussion regarding deficiency in the tender documents submitted by the petitioners revealed from the recitals of the resolution of the

said Committee and further the resolution itself clearly reveals that rejection was on the ground that the bids submitted by the petitioners were not in compliance with the essential terms and conditions of the tender document. Apparently, therefore, by no stretch of imagination, it can be said that the decision on the point of rejection was not available on record prior to issuance of letter dated 3rd November, 2005. There is nothing on record which could even remotely suggest that the said decision was not available on record prior to communication dated 3rd November, 2005.

18. The decision of the Apex Court in Star Enterprises' case (supra) on the point of requirement of reasons and communication thereof to the concerned parties, was in a matter where a party had sought to challenge the rejection of its highest offer, without assigning any reason on the ground the same being arbitrary, unconstitutional and contrary to the rule of law. In the said case, it was not in dispute that the scheme provided that the authority had reserved the right to amend, revoke or modify the scheme at its discretion as well as to reject any or all offers of allotment without assigning any reason. The question which the Apex Court had occasion to consider in the said case was that whether when the highest offer in response to an invitation is rejected, would not the

public authority be required to provide reasons for such action ? While answering the said question, the Apex Court held that “as the State has descended into the commercial field and giant public sector undertakings have grown up, the stake of the public exchequer is also large justifying larger social audit, judicial control and review by opening of the public gaze; have necessitated recording of reasons for executive actions including cases of rejection of highest offers. That very often involves large stakes and availability of reasons for actions on the record assures credibility to the action; disciplines public conduct and improves the culture of accountability. Looking for reasons in support of such action provides as opportunity for an objective review in appropriate cases both by the administrative superior and by the judicial process.” Having observed so, the Apex Court in the facts of the case before it, ruled that “when the highest offers of the type in question are rejected, reasons sufficient to indicate the stand of the appropriate authority should be made available and ordinarily the same should be communicated to the concerned parties unless there be any specific justification not to do so.” Laying stress on the expression “unless there be any specific justification not to do so”, it was sought to be contended on behalf of the petitioners that when the authority does not communicate the reasons to the concerned party and when the matter is challenged in

the Court, it is necessary for the authority to disclose the specific justification for non-communication of the reasons. The respondents in the matters in hand having not disclosed any specific justification, according to the petitioners, the communication dated 3rd November, 2005 is bad in law and discloses arbitrary exercise of power in the course of the decision by the respondents.

19. The ruling by the Apex Court regarding the need for specific justification for non-communication of the reason was in a case where "when the highest offers are rejected" and not in each and every case. Undoubtedly, the ruling clearly specifies that the reasons sufficient to indicate the stand of the appropriate authority should be available on record and the same must be found recorded in the records prior to or at the time of the communication about the decision to the concerned party. Being so, in case where the decision apparently discloses that even highest offer has been rejected or similar such situation occurs, certainly necessity for communication of the reasons for the decision cannot be undermined. However, even in such cases, the authority is not invariably obliged to communicate the reasons and more particularly when there is any specific justification not to do so. In the case in hand, it is not the case of the petitioners that there was any such unusual circumstance

or occasion like refusal of highest offer or the like nature, nor it is the case of the petitioners that even when they requested for disclosure of the reasons, the same were withheld by the authority. On the contrary, there was prompt response to the letter by the Hind Industries inquiring about details of reasons, and that itself discloses that the reasons were very much available on record prior to the communication letter dated 3rd November, 2005. Mere non communication of all those reasons in detail in the facts and circumstances of the case therefore cannot be found fault with. The decision in M/s. Star Enterprises' case (supra) is clearly distinguishable and is of no help to the petitioners in the case in hand. The first ground of challenge therefore fails.

20. The second ground of challenge is that the procedure followed for disqualifying the petitioners and communicated under letter dated 3rd November, 2005 is de hors the terms of tender document in as much as that as per the clause 2.17.1, it is Director of Transport i.e. Respondent No.2, who could disqualify the bidder on the basis of evaluation of the information contained in the envelope No.1. However, the impugned communication discloses that a Committee on high security had evaluated and had resolved to reject the bids which is de hors the terms of the bid document, and

therefore, illegal. Undisputedly, this ground of challenge though canvassed on behalf of the petitioners, and has been specifically raised in the writ petition filed by Hind Industries, however, no such ground has been raised in the petition filed by Promuk Hoffman. Nevertheless, since it relates to the alleged breach of procedure in relation to the exercise of powers to evaluate the bid, the learned advocates for the parties were heard at length on the said point.

21. Undoubtedly, clause 2.17.1 of the tender document relates to the subject of "Envelope No.1 (Pre-qualification Bid)". The clause reads as under:-

> "The bid will be opened first to verify its contents as per the requirement. If the various documents contained in this envelope do not meet the requirements, a note will be recorded by the bid opening authority accordingly and the remaining envelopes shall not be considered for further action. However, the right to ask for the missing/incomplete information stands reserved. The Director of Transport shall post qualify bidder on the basis of evaluation of the information contained in envelope no.1."

Apparently, therefore, the evaluation of pre-qualification bid in relation to the envelope No.1 has to be done and recorded by the bid opening authority, and consequent to the said decision, the Director of Transport should act. The term "authority" has been defined in the clause 1.1.4 to mean and include an officer of the Transport Department as designated by the State Government or any other agency of the State Government so notified by the State for that purpose. Obviously, therefore, the bid opening authority is the authority constituted by the Government and in relation to tender proceedings which would include the process of evaluating pre-qualification bid in the envelope No.1. Undisputedly, the evaluating authority was constituted on 12th August, 2005 and the bids having opened on 8th October, 2005, they were evaluated by the Committee on 21st and 25th October, 2005 and this was to the knowledge of the parties as the objections on the bid of other tenders were invited from all the tenderers and the same were placed before the Committee. The tender process disclosed from the terms and conditions thereof clearly empowered the Government to constitute such authority for evaluating bids and the Committee was accordingly constituted for evaluating the bids in accordance with the terms and conditions of the tender document. Being so, the communication dated 3rd

November, 2005 by the respondent No.2 in terms of the bid opening authority cannot be found fault with.

22. The next ground of challenge on behalf of the Promuk Hoffman is that the tender document submitted by the said petitioner clearly disclosed that the petitioner company had submitted the tender as the corporate body though it is a joint venture company so formed pursuant to and on account of the agreement in that regard between the Promuk Associates and M/s. EHA Hoffman KG, a German Company. The tender was not submitted as a “joint venture” within the meaning of the said expression under the tender document. Being so, the question of filling of certain columns of the document Annexure XII did not arise as those columns were necessarily related to the partners of joint venture within the meaning of the said expression under the tender document and were not relating to a joint venture company. Being so, the contention of the respondent Nos.1 and 2 that the tender documents submitted by the petitioners were incomplete or that the same contained any sort of ambiguities is not correct. According to the learned senior counsel arguing on behalf of the Promuk Hoffman, the documents submitted were complete in every respect and all necessary information in relation to the petitioner company was furnished. It was further sought to be

contended that the petitioners had submitted all the necessary documents in accordance with the requirements disclosed in the tender notice and terms and conditions of the tender. It was sought to be contended that the tender notice did not disclose any specific type of evidence being required in support of the statements in various annexures which were to be appended to the tender document by the bidders and the matter was left to the discretion of the parties in that regard and the petitioners having accordingly produced satisfactory material in support of each of the statements in the annexures, the petitioners could not have been disqualified on some flimsy grounds. According to the learned senior counsel, the decision of the Committee discloses non-application of mind and arbitrary exercise of powers.

23. As already observed above, the Promuk Hoffman's tender has been rejected on the two grounds, firstly that the annexure VIII discloses participation of joint venture in the bid, but the relevant columns in the Annexure XII regarding information of the partners in the joint venture are left blank. The agreement between the Promuk Associates and M/s. EHA Hoffman KG, a German Company, submitted along with the tender documents discloses a joint venture between those companies for manufacture and supply of high security vehicle

licence plates among other items. Being so, the annexures lack clarity about the participation and details about the role of foreign company for manufacture of high security licence plates. The said decision also relates to the absence of legal document in support of the claim relating to financial support for the expenditure of Promuk Hoffman by United Telecoms Limited in the manufacture and supply of the required product.

24. As regards the first part of the first ground of the decision for rejection of Promuk Hoffman's bid, bare perusal of Annexure XII would disclose that the petitioner had left columns in relation to the information of joint venture partners totally blank. It is to be noted that completion of Annexures VIII and XII in all respect was absolutely necessary as the same forms part of eligibility clauses No.1.4.1 and 1.4.2 of the tender documents. Undoubtedly, there is a statement in the said annexure that the bidder was bidding as a corporate entity and not as a joint venture in the sense of the subject tender. As already observed above, the Apex Court while dealing with the challenge to the various terms and conditions of the tender notice, had taken note of the fact that the technical know-how for the manufacture of high security registration plates is presently available outside India and technically and financially, competent indigenous

manufacturers are mostly those who are in collaborations with foreign companies engaged in such manufacturing activities. And that, the capacity and the capability are the two most relevant criterion for framing suitable conditions of any notice inviting tenders. Considering this most relevant aspect of the subject for which the tenders were invited, it cannot be said that merely because the bidder happened to be a corporate entity, it was not required to disclose details about the partners who had come together to form a joint venture company for the purpose of manufacture of the concerned products. Once it was to the knowledge of all the parties and including the petitioners that the technical know-how in respect of the manufacture of concerned product, at present is not available indigenously and the magnitude and huge investment which is required for infrastructure and production of the concerned product and the requirement of collaboration with the foreign companies and the need for experience in the foreign countries along with the necessary financial availability, it was but necessary for the bidders to give relevant details about the partners who had come together even to form a joint venture company for the purpose of the manufacture and supply of concerned product while submitting tender documents. In fact, the Annexure XII clearly required such details to be given about the partners of a joint venture. No doubt, a

joint venture has been defined in the tender document to mean the association of two or more but not exceeding three in number any individual or the corporate entity formed for the purpose of bid. In other words, it not only indicates a joint venture of two or three firms but it also includes a corporate entity which can come into existence on account of joint venture agreement between two or three corporate bodies. Only condition which is disclosed in the defining clause is that there must not be more than three entities forming a joint venture, either as an association or as a corporate entity for the required purpose. Being so, the details regarding the partners coming together to form joint venture as an association or consortium or even a corporate entity ought to have been disclosed in the Annexure XII and bearing in mind the decision and observations of the Apex Court in Association of Registration Plates' case (supra), the requirement of disclosure of such information cannot be said to be discretionary matter or non essential term of the tender conditions. On the contrary, it was absolutely essential condition of the tender document. It is nobody's case that either the petitioners or any bidder was misled by any of the terms and conditions of the tender document, or that there was any ambiguity therein. Non disclosure of the said information would therefore be fatal and having so considered by the evaluating authority, no fault can be found with

its decision. It does not disclose any arbitrariness on the part of the respondents in that regard.

25. The second part of the first ground of the decision for rejection relates to absence of cogent material in support of the claim of Promuk Hoffman about the financial support for capital expenditure by United Telecoms Limited. Undoubtedly, the letter by UTL dated 28th September, 2005 discloses a statement by the said company that it has full financial support for the capital expenditure to the tune of 1 crore and working capital expenditure to the tune of 5 crores for implementation and execution of high security registration plates project in the State of Goa. It also discloses that the company has a line of credit of 138.25 crores with various banks and the company has cumulative networth of Rs.135 crores on the date of 28th September, 2005. It is also stated that the letter was accompanied with the Memorandum and Articles of Association, Audited Balance Sheet as on 31st March, 2004 and Provisional Balance Sheet as on 31st March, 2005. The decision however discloses that none of these documents revealed legally binding document in favour of Promuk Hoffman having been executed by UTL. Apart from contending that the letter itself is a sufficient document in that regard, the petitioners have not been able to controvert the decision of the

Committee. Nothing has been placed before us to substantiate the contention disclosed in the letter dated 28th September, 2005 that the confirmation about the financial support by UTL will be available all through out the term for which the contract could be awarded. In our considered opinion, mere such letter without biding obligation for UTL for lending financial support to Promuk Hoffman during the contractual period, there is no scope for finding fault with the decision as it does not reveal any arbitrariness in the decision making process. The decision arrived at by the Committee in that regard cannot be said to be either arbitrary or perverse. Merely because some other view is also possible on the basis of the documents submitted cannot be a justification for interference in writ jurisdiction as the High Court cannot sit in appeal over the decision of the Committee. As the decision making process does not disclose any arbitrariness nor any sort of perversity, there is no scope for interference in the said decision.

26. As regards the second ground of the decision for rejection of the bid of Promuk Hoffman, it relates to certificate of experience and absence of experience in all the categories of security features in terms of the requirement of tender document. The relevant clause in that regard in the tender document is to be found under clause 1.4.3

which provided that the bidder should have sufficient experience in the field of Security Registration Plates and should have been working in atleast five countries for licence plates and in a minimum of three countries with licence plates having security features worldwide and the necessary credentials from the Government of such Country was required be attached and Annexure XIII was required to be filled up. In other words, the bidder was required to have experience in the field of security registration plates while having work experience atleast in five countries for licence plates and in minimum of three countries in relation to licence plates having security features. The experience in that regard had to be supported by the credentials issued by the Government of the concerned country, besides the Annexure XIII was required to be filled up with necessary information regarding work experience in security features. Clause nowhere made any exception nor granted any exemption from the experience in relation to any particular category. The Annexure XIII to the tender document clearly reads thus:-

"Experience record in the same field

Name of the Bidder/JV _____

_____

_____

Section `A'

A. Name of Countries where the bidder/partner in Joint Venture has worked/working.

Sr.No.	**Name of Country** **(To be filled by Bidder)**
1	
2	
3	
4	
5	

Necessary proof in support of the work should be attached to this Annexure.

Section `B'

A. Details of countries where the bidder/its constituent partner has worked/been working for Security Registration Plates with Security Features (features notified by the Ministry of Road Transport & Highways, Govt. of India.)

Security Features	Country 1	Country 2	Country 3	Country 4	Country 5
Laser Branded Permanent Consecutive Identification Number					
Chromium Based Hologram					
3rd License Plate Sticker					
Hot Stamping Foil with verification inscription					

Necessary proof in support of the work should be attached to this Annexure."

27. Apparently, the Annexure XIII has two sections. Section A and Section B. Section A relates to the list of countries where bidder or his partner in joint venture has worked or has been working and it should disclose such work experience in minimum five countries. Section B relates to the details of the countries where the bidder or its constituent partner has worked or has been working for Security Registration Plates with Security Features

(features notified by the Ministry of Road Transport & Highways, Government of India.). The columns thereunder enumerate four categories on security features, viz. (i) Laser Branded Permanent Consecutive Identification Number, (ii) Chromium Based Hologram, (iii) 3rd License Plate Sticker, and (iv) Hot Stamping Foil with verification inscription. There are five columns for each country. However, the requirement under clause 1.4.3 discloses that the bidder or its partner should have work experience in at least five countries for licence plates and in minimum of three countries with licence plates having security features worldwide and all this information was required to be disclosed in the Annexure XIII appended to the tender document. In other words, though the work experience in minimum three countries with license plates having security features worldwide was sufficient, such work experience had necessarily to be in all the four categories of security features. It was not left to the discretion of the bidder to have experience in either one, two or three categories of security features. Though the work experience in three countries in relation to the licence plates having security features was sufficient, the provision comprised under clause 1.4.3 read with the Annexure XIII nowhere discloses that the work experience in any three of the categories would be a sufficient compliance of the said provision. On the contrary, the

clause 1.4.3 specifically states that the Annexure XIII is required to be filled in relation to the work experience and Section B of Annexure XIII discloses requirement of such experience in all the four categories of security features. It was obvious that the bidder or his partner was required to have worked or had been working in all four categories of security features. Undoubtedly, such work experience in four categories could have been in three different countries. It was not necessary that in each category, it was required to have experience in three countries. But though work experience could have been in three countries, at the same time, the experience of work in all four categories of security features was must and that is what is apparent from the clause 1.4.3 read with the Annexure XIII. It is an essential condition of the tender document. Here again, one is remanded of the observations of the Apex Court in Association of Registration Plates' case (supra) to the effect that the Central Government on recommendation of its Technical Committee has devised a system of high security registration plates which will ensure public safety and security and further the relevant part of Rule 50 of the Central Motor Vehicles Rules, 1989 which had been transcribed in the said decision of the Apex Court. Considering the same, the contention on behalf of the petitioners that the work experience in any three countries irrespective of whether that such

work experience is in two, or three or four categories would be sufficient compliance of tender conditions cannot be accepted, and therefore, no fault can be found with the second reason disclosed in the decision of the Committee for rejection of the bid of the Promuk Hoffman.

28. The contention, that the tender documents do not disclose any particular type of proof having been required to be produced, and therefore, whatever proof produced by the parties should have been accepted, is totally devoid of substance. It is not necessary to enumerate in detail about the nature of proof required. In cases of financial matters, it is but natural that while submitting the tender documents claiming necessary financial capacity, the tenderer has to disclose a valid and a cogent material which could reveal necessarily binding obligation upon the third party to provide such financial assistance. If no such cogent material is produced in support of the tender, it can hardly be said that mere absence of disclosure of necessity for a specific nature of the proof in support of the claim would entitle the concerned party to produce any type of material in relation to the financial resources for the production of concerned product by the concerned party. The condition relating to financial capacity and ability is an important and essential

condition and non-compliance or incomplete compliance thereof has to result in rejection of bid.

29. In any case, once it is found that the decision regarding rejection of bid can be sustained on any one of the grounds, merely because some other ground even appeared to be non sustainable that would not warrant interference of this Court in writ jurisdiction.

30. It is also sought to be contended that the rejection of the petitioners' bids in the absence of necessary work experience in all the four categories is discriminatory in as much as that inspite of the fact that the Respondent No.3 had no such work experience in all the four categories, the bid by the respondent No.3 has not been rejected. The contention is totally devoid of substance. The copy of Annexure XIII submitted by the respondent No.3 apparently discloses that the respondent No.3 did possess such experience of work in all the four categories in Sri Lanka, and in three categories in Malta, Palestine and Albania. Obviously, therefore, the respondent No.3 clearly satisfied with the requirements of clause 1.4.3 of the tender document.

31. As regards the bid by Hind Industries, the challenge of the

petitioner in relation to the first ground is that the joint venture of the petitioner does not consist of more than 3 partners or members. According to the learned senior counsel the agreement dated 25th February, 2005 which is relied upon by the Committee as being a second joint venture agreement, and based on which it has concluded that there are four parties in the joint venture, is not at all an agreement of joint venture but it is merely an agreement for providing necessary plant and machinery for the use of manufacture of the required product by the joint venture of the petitioner. According to the learned senior counsel, the agreement of 25th February, 2005 by Hind Industries with Umesh Saigal does not relate to any joint venture between the parties but merely an agreement to utilize plant and machinery of the said Umesh Saigal for the purpose of manufacture of laminated number plates by the petitioner's joint venture without any equity shareholding by the said Umesh Saigal in the joint venture of the petitioner. The committee having totally misconstrued the agreement of 25th February, 2005 between the Hind Industries and Umesh Saigal as being part of the petitioner's joint venture, and has totally erred and discloses total non application of mind besides arbitrary exercise of powers in that regard by the Committee. The learned Advocate General, on the other hand, has submitted that the agreement dated 25th February, 2005 apparently

discloses participation of Umesh Saigal in the joint venture of the petitioner. Admittedly, there are three constituents of joint venture of the petitioner and Umesh Saigal being a 4th constituent, it is squarely contrary to the joint venture as defined under clause 1.14 of the tender document, and therefore, the decision of the committee cannot be faulted.

32. Undisputedly, the joint venture has been defined under clause 1.14 to mean the association of two or more but not exceeding three in number, any individual or corporate entity formed specifically for the purpose of bid. The petitioner's joint venture which is disclosed under agreement dated 3rd February, 2006 revealed three parties, namely, (1) M/s.Hind Industries Limited, (2) M/s.Muschard Dechnikvertrieb, and (3) M/s.Wilhelm Grewe OHG. Obviously, three different companies formed a joint venture. At the same time, the agreement dated 25th February, 2005, is named as joint venture agreement. Undoubtedly, mere nomenclature of the agreement would not decide the nature of the agreement. It would be necessary to take into consideration the entire agreement as a whole to ascertain whether it would relate to a joint venture formed under agreement dated 3rd February, 2005 between the above referred companies. It is pertinent to note that the agreement with

Umesh Saigal was entered into after the execution of the joint venture agreement dated 3rd February, 2005 between the above referred three companies. The said agreement ex facie discloses that the parties were desirous of entering into an agreement which will synergic the technical competencies and experience of both parties and enable Hind Industries to set up a unit of manufacture of laminated aluminum security number plates and further that Umesh Saigal would provide necessary space for setting up such unit which would include land, building, etc. and the plant and machinery required for the unit for manufacturing of product. At the same time, there is a clear agreement for profit sharing. The agreement refers to Hind Industries as "JV.1" and refers to Umesh Saigal as "JV.2"" The relevant clause reads thus : -

> "JV2 shall be paid minimum amount, in lieu of profit, subject to statutory deduction, if any, annually as stated in Annexure A to the present agreement by JV1. The JV1 at its discretion may also pay the JV2 a share in the increased profits for any period. In the event of the JV1 deciding to pay a share in profits the percentage would be mutually decided. In the event of their being no profits or in case a mutual decision cannot be arrived at, JV2 agrees

> to abide by the decision of JV 1 subject to a Minimum Amount, in lieu of profit, subject to statutory deduction, if any, as stated in annexure A."

Further, clause (3) reads thus:-

> "JV2 will provide technical know how, to the extent of their abilities and as may be required by JV1."

Further, yet another relevant clause is a clause (9) of the agreement, which reads thus:-

> "JV1 and JV2 have agreed that the JV will be effective as of the date of its signature of JV1 and JV2 and shall remain in force for a period of 20 years. The agreement is extendable on the sole discretion of JV1 for a further period of 20 years. The agreement is liable to be terminated only in case the High Security Registration project fails to take of or is abandoned. In that case JV2 shall have the right to enter into a JV with a third party and the liability, if any, shall be recovered from earnings of JV2 from the third party. However, JV1 shall not be liable to pay any compensation in this regard to JV2."

Thus, the agreement apparently discloses a clear link between the joint venture arrived at under the agreement dated 3rd February, 2005 and Umesh Saigal, and further that the present agreement of 25th February, 2005 to have been executed in furtherance of attaining the object behind forming the joint venture under agreement date 3rd February, 2005. Being so, it apparently disclosed joint venture of four partners. Merely because there are two different agreements, it will not cease to be a joint venture of four partners.

33. The second ground of challenge by Hind Industries refers to rejection of bid on the ground of absence of government certificate regarding experience. Learned senior counsel appearing for the petitioner in that regard submitted that even though the certificates were not issued by the Government authorities merely on that ground the petitioner could not have been disqualified at the preliminary stage. The respondents could have afforded an opportunity to the petitioner to produce such certificates if it is an essential condition of tender document. According to the learned senior counsel, such a certificate cannot be an essential condition at the pre-qualification stage as it essentially relates to the experience

of the party in relation to the work to be performed. Once the certificate discloses sufficient experience, mere absence of certificate by the government authorities is a technical defect and can be cured by giving proper opportunity to the parties to do so. What was material at the preliminary stage was to ascertain whether the petitioner had sufficient experience and once the experience is disclosed, merely on technical ground of absence of certificate by the government, the petitioner's bid could not have been rejected.

34. Undisputedly, in terms of the clause 1.4.3, the eligible bidder was required to submit necessary credentials from the government of the respective countries in which he claimed to have experience of work in relation to the licence plates having security features. The Apex Court in Association of Registration Plates' case (supra) had clearly observed that at present, there is no technical know-how available in respect of manufacture of such plates in the country, and for that purpose, the collaboration with foreign firms is inevitable. The clause 1.4.3 which relates to sufficient experience in the field can by no stretch of imagination be held to be a non-essential condition of the terms and conditions of the tender document. The experience in the field being of utmost importance and the clause specifically required the bidder to substantiate its

claim about the work experience in five countries for licence plates and in a minimum of three countries with licence plates having security features, from the concerned government, it was absolutely necessary for the petitioner- Hind Industries to produce the proof of experience from the government of the concerned country. Undisputedly, the petitioner did not produce such proof. The condition being an essential one, the petitioners cannot be heard to contend that they should have been given an opportunity to produce the certificate from the government. It is pertinent to note that even in the petition filed before this Court, there is no document produced from the government of the concerned country regarding such experience. Apparently, it is a lame excuse under which the petitioners try to seek interference in the decision of the authority. It is true that what is important is the experience and not mere certificate thereof. But at the same time, it cannot be said that any certificate at the sweet-will of the bidder will do. The certificate have be an authenticated one and issued by competent authority and only then it can be a reliable one. As the actual experience is important, equally is the important the proof of such experience and a reliable document regarding such proof.

35. It is not a mere experience in the field which was

required to be disclosed by the bidder. The clause 1.4.3 clearly requires experience in the field of security registration plates and licence plates having security features, and in case of former, it was required to have work experience at least in five countries whereas in relation to later, atleast in three countries. Besides, once it clearly specifies that such experience has to be authenticated by the necessary certificate from the Government of the concerned country, it cannot be said that failure in that regard, can be termed as “in consequential or that it can be rectified”. It is well settled law that the mistakes, if any, committed in the tender document cannot be allowed to be corrected. The tender document will have to be considered along with the mistakes and if the mistakes relate to the essential condition, it can invite grave consequences. In this regard, the learned advocate for the respondent No.3 is certainly justified in drawing our attention to the decision of the Apex Court in W.B. State Electricity Board v. Patel Engineering Co.Ltd. & Ors., reported in (2001) 2 SCC 451, wherin it was ruled that mistakes, even if they are unintentional, cannot be allowed to be corrected after the tender is submitted. The mistakes are to be corrected before the tender document is submitted.

36. As regards the third ground of challenge on behalf of the

Hind Industries relates to the alleged absence of bank solvency certificate in terms of the tender document. According to the learned senior counsel, undisputedly, the solvency certificate was produced but it so happened that the document of solvency certificate which was produced was addressed to the Director of Transport at Rajasthan. It was also a technical mistake which could have been allowed to be rectified. It is not the case of the respondents that the petitioner was not solvent. Necessary solvency of the petitioner was certainly certified by the said certificate. Being so, the rejection on the third ground also is purely on technical ground, and therefore, cannot be sustained. The attention is drawn by the learned senior counsel to the decisions of the Apex Court in G.J.Fernandez v. State of Karnataka & Ors, reported in (1990)2 SCC 488 and Ramana Dayaram Shetty v. International Airport Authority of India & Ors., reported in (1979)3 SCC 489 as well as the decision of the Division Bench of this Court in Agrawal Roadlines Pvt. Ltd. v. Indian Oil Corporation Ltd. & Ors., reported in 2003(1) Bom.C.R. 495. According to the learned senior counsel, it is only a mistake which could have been asked to be rectified being a technical irregularity and cannot amount to violation of essential condition of the tender document as such, which could enable the respondents to reject the bid of the petitioner.

37. In fact, the decision in Agrawal Roadlines Pvt. Ltd. Case (supra) was in the background of the decision in Ramana Dayaram Shetty's case and G.J.Fernandez's case (supra). It was held in M/s.Poddar Steel Corporation v. M/s.Ganesh Engineering Works, reported in AIR 1991 SC 1579, after considering the decisions in Ramana Dayaram Shetty and G.J.Fernandez's cases (supra), that there cannot be a general proposition that the authority inviting tenders is bound to give effect to every term mentioned in the notice in meticulous detail and is not entitled to exercise even a technical irregularity of little or no significance. The requirements in the tender notice can be classified in two categories, those which lay down the essential conditions of eligibility and the others which are merely ancillary or subsidiary with the main object to be achieved by the condition. In the first case the authority issuing the tender may be required to enforce them rigidly. In the other cases, it must be open to the authority to deviate from and not to insist upon the strict literal compliance of the condition in appropriate cases.

38. In Agrawal Roadlines Pvt. Ltd.'s case (supra), the Division Bench of this Court relying upon the decision of the Apex Court in M/s.Poddar Steel Corporation's case (supra), held that the only

mistake committed by the petitioners was that they annexed the demand draft issued in favour of other Corporation. That was only a technical irregularity and did not in the facts of the case could be said to violate the essential conditions of the tender notice and it was only because of inadvertence that the demand drafts purchased by the petitioners got interchanged. In those circumstances, it was held that if an administrative decision is based on hypertechnical approach by treating a non essential condition of the tender notice as essential condition, such administrative decision shall cease to be fair and would lack reasonableness warranting interference in suitable and deserving cases under Article 226.

39. Bearing in mind the law laid down by the Apex Court as well as by this Court, it is difficult to appreciate the stand taken by the respondents as regards the absence of certificates in relation to the bank solvency certificate. As regards the solvency certificate, the relevant clause in that regard to which attention is drawn, is to be found under clause 2.3.6 which reads thus:-

"Bank Solvency Certificate equivalent to Rs.50 crores of the Bidder/Partners to the Joint Venture."

However, as already observed above, if the decision of the committee to disqualify the petitioners can be sustained on one of the grounds on which the decision is taken, merely because some other ground may not be sustainable, then it would not warrant interference in writ jurisdiction.

40. In Datta Associates Pvt.Ltd. v. Indo Merchantiles Pvt.Ltd. & Ors., reported in (1997) 1 SCC 53, it was held that whatever procedure the government proposes to follow in accepting the tender must be clearly stated in the tender notice and while a bona fide error or error of judgment would not certainly matter, any abuse of power for extraneous reasons would expose the authorities concerned to appropriate penalties at the hands of the courts. That was a case where the tender notice did not specify the "viability range" nor did it say that only the tenders coming within the viability range would be considered. The tender notice did not even state that after receiving the tenders, the Commissioner/Government would first determine the "viability range" and would then call upon the lowest eligible tenderer to make a counter-offer. The exercise of determining the viability range and calling upon the lowest tender to make a counter-offer on the ground that he was the lowest tenderer among the eligible tenderers was outside the tender notice, and

therefore, it was held that fairness demanded that the authority had to have notified in the tender notice itself the procedure which they were proposing to adopt while accepting the tender and having not done so, they had acted illegally. The decision was in totally different set of facts and not applicable to the case in hand.

41. The Apex Court in Kapila Hingorani v. State of Bihar, reported in (2003) 6 SCC, which was sought to be relied upon by the learned senior advocate for the petitioner - Promuk Hoffman and more particularly the attention was drawn to the paragraph Nos. 26 and 27 thereof, held that the corporate veil in revenue and taxation matters and that the corporate veil can be pierced when the corporate personality is found to be opposed to justice, convenience and interest of the revenue or workman or against public interest. Apparently, the decision is of no help to the petitioner- Promuk Hoffman to justify our interference in writ jurisdiction in a decision taken by the competent authority based on the materials on record. There was a clear conscious omission on the part of the petitioner in furnishing the necessary details which were required to be furnished in terms of the tender conditions. The omission in that regard on the part of the petitioner could not have been ignored by the respondent. The petitioners themselves had failed to disclose the

necessary data in the tender document inspite of the fact that the disclosure of such narration related to the essential terms and conditions of the tender document.

42. The Apex Court in Kumari Shrilekha Vidyarthi v. State of U.P. & Ors., reported in AIR 1991 SC 537, while reiterating its earlier decision in Liberty Oil Mills v. Union of India, (AIR 1984 SC 1271), had held that it is necessary that the decision has to be communicated, but reasons for the decision need not be stated; but the reasons must exist, otherwise, the decision would be arbitrary. The non-assigning of reasons or the non-communication thereof may be based on public policy, but a decision without the existence of any cogent reason in furtherance of the object for which the power is given would be arbitrary and, therefore, against public policy. Apparently, even assuming that the decision affects the right of a party, non-communication of the reasons for decision by itself would not be fatal when such reasons are found to have been recorded and in existence on record contemporaneously with the communication of the decision to the concerned party.

43. In Laxmi Sales Corporation v. M/s. Bolangir Trading Co. & Ors., reported in 2005 AIR SCW 1337, the Apex Court while

referring to certain conditions of a tender form and annexures which were required for the production of proof of work experience for the last two years with full details and supporting documents as also the production of proof of turnover with latest profit and loss account duly certified by a Chartered Accountant, held that such conditions are to be construed as the mandatory requirements and while holding so, the Apex Court had rejected the decision of the High Court wherein it was held that there was no mandatory requirement for production of such document which was apparently contrary to the terms and conditions of the tender document.

44. In New Horizons Limited & Anr. v. Union of India & Ors., reported in (1995)1 SCC 478, it was held that even if it be assumed that the requirement regarding experience as set out in the advertisement inviting tenders was a condition about eligibility for consideration of the tender, the said requirement regarding experience cannot be construed to mean that the said experience should be of the tenderer in his name only and that in respect of a joint venture company, the experience of the company can only mean the experience of the constituents of the joint venture. The reliance on this decision by the petitioners is thoroughly misplaced. In the case in hand, inspite of incomplete information submitted by

the petitioners, the respondent authority did take into consideration the experience of the constituents of the petitioner's joint venture company, and found that Promuk Hoffman had no work experience in all the four categories of security features.

45. Similarly, the decision in State of Assam & Anr. v. Raghava Rajgopalachari, reported in 1972 SLR 44 and Assistant Commissioner of Commercial Taxes (Asst.) Dharwar & Ors. v. Dharmendra Trading Company & Ors., reported in (1988) 3 SCC 570 are also of no assistance to Promuk Hoffman. The first decision is on the point that the authority cannot attack its own order as a respondent and the second decision is relating to the applicability of doctrine of promissory estoppal against Government.

46. On the point of formation of cartel by the respondent No.3, though allegation in that regard was made in the petition by Promuk Hoffman, the learned senior advocates have fairly stated that the petitioners do not want to canvass the arguments in that regard. In fact, the learned advocate did try to draw our attention to the decision in Union of India & Ors. v. Hindustan Development Corporation & Ors., reported in (1993)3 SCC 499 in that regard. But it is not necessary to deal with this issue as it is specifically given up

in the course of hearing of the matter.

47. When apparently the petitioner is lacking necessary experience in one of the security features as also failed to furnish necessary proof in support of claim relating to work experience in terms of the tender conditions and also did not produce required proof regarding the financial aspect, the decision cannot be said to be vitiated nor the decision can be said to be arbitrary or perverse. Hence, no interference is called for in writ jurisdiction.

48. No other point is canvassed in the course of argument, and for the reasons stated above, therefore, there is no case made out for interference in the tender proceedings in exercise of powers under writ jurisdiction. Hence, both the petitions fail and are hereby dismissed, with costs.

(R.M.S.KHANDEPARKAR, J)

(N.A.BRITTO, J)